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REPORT
99-73

SUPERFUND REVENUE ACT OF 1985

MAY 23 (legislative day, APRIL 15), 1985.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Finance, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 51]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (S. 51) [1] to amend the Comprehensive Environmental Response Compensation, and Liability Act of 1980, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

I. SUMMARY

A. Present Law

Hazardous Substance Response Trust Fund and Taxes

Under present law, excise taxes are imposed on crude oil and certain chemical feedstocks, and amounts equivalent to these taxes are deposited (together with appropriated funds) into the Hazardous Substance Response Trust Fund ("Superfund"). These amounts are available for expenditures incurred in connection with releases or threatened releases of hazardous substances and pollutants or

[1] S. 51, the Superfund Improvement Act of 1985, has been considered and reported favorably by the Committee on Environment and Public Works (S. Rep. 99-11; March 18, 1985). The bill was referred to the Committee on Finance for consideration of the revenue aspects of the legislation (title II and sec. 140).

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contaminants into the environment. These provisions were enacted in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), which established a comprehensive system of notification, emergency response, enforcement, and liability for hazardous spills and uncontrolled hazardous waste sites.

An excise tax of 0.79 cent per barrel is imposed on the receipt of crude oil at a U.S. refinery, the import of crude oil and petroleum products, and the use or export of domestically produced crude oil (if the tax has not already been paid).

An excise tax is imposed on the sale or use of 42 specified organic and inorganic substances ("chemical feedstocks") if they are produced in or imported into the United States. The taxable chemical feedstocks generally are intrinsically hazardous or create hazardous products or wastes when used. The rates vary from 22 cents to $4.87 per ton. (See Table 1 for a list of current law tax rates on chemical feedstocks.)

The taxes generally are scheduled to terminate after September 30, 1985. However, the taxes would have been suspended during calendar years 1984 or 1985, if, on September 30, 1983, or 1984, respectively, the unobligated trust fund balance had exceeded $900 million, and if the unobligated balance on the following September 30 would have exceeded $500 million, even if these excise taxes were to be suspended for the calendar year in question. (As of September 30, 1984, the unobligated balance in the Superfund was $295 million.) Further, the authority to collect taxes would otherwise terminate when cumulative receipts from these taxes reach $1.38 billion. (Cumulative revenues from these excise taxes through September 30, 1984, amounted to $0.863 billion.)

Post-closure Liability Trust Fund and Tax

Effective after September 30, 1983, an excise tax of $2.13 per dry weight ton is imposed on hazardous waste which is received at a qualified hazardous waste disposal facility and which will remain at the facility after its closure. These tax receipts are deposited into the Post-closure Liability Trust Fund. This Trust Fund is to assume completely the liability, under any law, of owners and operators of closed hazardous waste disposal facilities that meet certain conditions. No liabilities have yet been assumed by the Trust Fund. These provisions were enacted in CERCLA.

Authority to collect the post-closure tax would be suspended for any calendar year after 1984, if the unobligated balance in the Trust Fund had exceeded $200 million on the preceding September 30. (Cumulative receipts from the post-closure tax through September 30, 1984, amounted to less than $5.9 million.) Further, authority to collect the tax terminates when cumulative receipts from the crude oil and chemical excise taxes, described above, reach $1.38 billion, or, if earlier, after September 30, 1985.

B. Finance Committee Amendment to S. 51

Hazardous Substance Superfund

The committee amendment redesignates the "Hazardous Substance Response Trust Fund" as the "Hazardous Substance Superfund," and continues and expands the Superfund by allocating to the fund the balance of the existing Superfund and Post-closure Liability Trust Fund in addition to amounts equivalent to the new Superfund Excise Tax on manufacturers, together with the present law taxes on petroleum and chemical feedstocks (modified as described below). No general revenues are authorized to be appropriated to the Superfund after fiscal year 1985.

The Superfund expenditure purposes and administrative provisions are generally the same as under present law; however, the committee amendment relocates these provisions from CERCLA to the trust fund code (Chapter 98) of the Internal Revenue Code.

The amended trust fund provisions are effective on October 1, 1985.

Petroleum and chemical feedstocks taxes

The petroleum and chemical feedstocks taxes (Codes secs. 4611 and 4661) are extended for five years, through September 30, 1990, at their present law rates. Exemptions from the chemical feedstocks tax are provided for exports of taxable chemicals; substances used to produce animal feed; and certain domestically recycled nickel, chromium, or cobalt (in addition to the present law exemptions).

These taxes would be suspended or terminated earlier than September 30, 1990, under certain conditions when the unobligated balance in the Superfund exceeded $1.5 billion. Additionally, the taxes would expire at any point at which the Secretary determines that cumulative Superfund receipts during the reauthorization period (including interest but not including recoveries, fines, or other non-tax amounts) equal or exceed $7.5 billion.

Superfund Excise Tax

Under the committee amendment, a new Superfund Excise Tax is imposed on the sale or lease of tangible personal property, in connection with a trade or business, by the manufacturer of the property. The tax rate is equal to 0.08 percent of the sales price of, or gross lease payments for, the property (i.e., $8 of tax per $10,000 of taxable amount). In the case of imports, the tax is imposed on the importer of tangible personal property based on the customs value (or, if no customs value is available, the fair market value) of the imported property plus customs duties. The tax is fully deductible against Federal income taxes.

A credit is allowed against the tax for purchases of tangible personal property, which is allocable to the cost of manufactured goods, using the manufacturer's inventory accounting method for income tax purposes. No tax is imposed on any manufacturer having $5 million or less of sales or lease receipts in any year. (In the case of imports, no tax is imposed on any shipment with a customs value, including duties, of less than $10,000.) Credits in excess

of a manufacturer's tax liability may be carried over against later years' tax liabilities; however, excess credits may not be refunded. For purposes of the credit, expenses for items which are depreciable for income tax purposes are fully included in the year of purchase.

In addition to the exemption for small manufacturers, items sold or leased by governmental units and by tax-exempt organizations (other than by unrelated trades or businesses), are exempt from the tax. Additionally, exported items are exempt from tax. Special rules are provided for purposes of implementing the export exemption, as well as for establishing constructive sales prices for manufactured goods in appropriate cases.

For purposes of the tax, "manufacturing" is generally defined as it is for purposes of the Standard Industrial Classification ("SIC") Manual published by the Office of Management and Budget. Manufacturing also includes mining and the production of raw materials generally. However, manufacturing subject to the tax does not include the storage or transportation of property (or services incidental thereto); the preparation of food in a restaurant or other retail establishment; or the incidental preparation of property.

"Tangible personal property" includes natural gas and other gaseous products and materials, but does not include electricity, unprocessed agricultural products (including timber), or unprocessed food products.

The Superfund Excise Tax is to be effective from January 1, 1986 through December 31, 1990, with provisions for earlier termination or suspension under the same conditions as the petroleum and chemical feedstocks taxes (discussed above). Returns for the tax are to be filed on an annual basis, using the taxpayer's taxable year for income tax purposes.

Repeal of post-closure liability tax and trust fund

The committee amendment repeals the Post-closure Liability Trust Fund and the related hazardous waste disposal tax (Code sec. 4681), effective October 1, 1985. Amounts in the Trust Fund at that time are to be transferred to the Superfund.

Study of alternative Superfund taxes

The committee amendment directs the General Accounting Office ("GAO") to report to the Finance Committee by January 1, 1988, regarding alternative mechanisms for financing the Superfund. This report is to include a study of the effect of a tax on hazardous waste on the generation and disposal of such waste.

Industrial development bonds for hazardous waste disposal facilities

The committee amendment allows State and local governments to issue tax-exempt industrial development bonds (IDBs) to finance facilities for the treatment of hazardous waste, as these terms are defined under section 1004 of the Solid Waste Disposal Act. This exemption is limited to facilities which are subject to permitting requirements under the Resource Conservation and Recovery Act (RCRA). This provision is effective on the date of enactment.

II. EXPLANATION OF FINANCE COMMITTEE AMENDMENT TO S. 51

A. Present Law

1. Hazardous Substance Response Trust Fund and Taxes

Hazardous Substance Response Trust Fund

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") (P.L. 96-510) established a comprehensive system of notification, emergency response, enforcement, and liability for hazardous substance spills and uncontrolled hazardous waste sites.

The Hazardous Substance Response Trust Fund ("Superfund") was established by CERCLA as a trust fund in the Treasury of the United States. Amounts in the Superfund are available for expenditures incurred under section 111 of CERCLA (as enacted) in connection with releases or threats of releases of hazardous substances into the environment. Allowable costs include: (1) costs of responding to the presence of hazardous substances on land or in the water or air, including cleanup and removal of such substances and remedial action; (2) payment of claims for injury to, or destruction or loss of, natural resources belonging to or controlled by the Federal or State governments; and (3) certain costs related to response, including damage assessment, epidemiologic studies, and maintenance of emergency response forces.[2]

Under CERCLA, there are appropriated to the Superfund (though September 30, 1985): (1) amounts equivalent to amounts received in the Treasury under Internal Revenue Code sections 4611 (pertaining to the petroleum tax) and 4661 (pertaining to the tax on certain chemical feedstocks); (2) amounts recovered from responsible parties on behalf of the Superfund under CERCLA; (3) penalties assessed under title I of CERCLA; and (4) punitive damages under section 107(c)(8) of CERCLA (pertaining to damages for failure to provide removal or remedial action upon order of the President). The petroleum and feedstock taxes are scheduled to expire after September 30, 1985.

In addition to these amounts, CERCLA authorizes general revenue appropriations to the Superfund of $44 million per year for fiscal years 1981 through 1985 (i.e., an aggregate of $220 million) and, for 1985, an additional amount equal to so much of the aggregate authorized to be appropriated for 1981 through 1984 as has not been appropriated before October 1, 1984.

Not more than 15 percent of the Superfund receipts attributable to taxes and general revenue appropriations may be used for the payment of natural resource damage claims. CERCLA further provides that claims against the Superfund may be paid only out of the Fund. If, at any time, claims against the Fund exceed the balance available for payment of those claims, the claims are to be paid in full in the order in which they were finally determined.

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[2] The Fund also may be used for payment of claims asserted and compensable but unsatisfied under section 311 of the Clean Water Act. All moneys recovered under section 311(b)(6)(B) of the Clean Water Act are appropriated to the Superfund. These claims and moneys involve certain costs arising before the date of enactment of CERCLA.

The Superfund has authority to borrow for the purposes of paying response costs in connection with a catastrophic spill or natural resource damage claims. Outstanding advances at any time may not exceed estimated tax revenues for the succeeding 12 months; advances for paying natural resource damage claims may not exceed 15 percent of such revenues. All advances must be repaid by September 30, 1985.

The Superfund is managed by the Secretary of the Treasury, who is required to report annually to Congress on the financial condition and operations of the Fund.

Petroleum tax

Present law (sec. 4611 of the Code) imposes an excise tax (the "petroleum tax") of 0.79 cent per barrel on domestic crude oil and on petroleum products (including crude oil) entering the United States for consumption, use, or warehousing. The tax on domestic crude oil is imposed on the operator of any United States refinery receiving such crude oil, while the tax on imported petroleum products is imposed on the person entering the product into the United States for consumption, use, or warehousing. If crude oil is used in, or exported from, the United States before imposition of the petroleum tax, the tax is imposed on the user or exporter of the oil.

Domestic crude oil subject to tax includes crude oil condensate and natural gasoline, but not other natural gas liquids. Taxable crude oil does not include oil used for extraction purposes on the premises from which it was produced, such as for powerhouse fuel or for reinjection as part of a tertiary recovery process. In addition, the term crude oil does not include synthetic petroleum (e.g., shale oil, liquids from coal, tar sands, biomass, or refined oil).

Petroleum products which are subject to tax upon being entered into the United States include crude oil, crude oil condensate, natural and refined gasoline, refined and residual oil, and any other hydrocarbon product derived from crude oil or natural gasoline which enters the United States in liquid form. For purposes of determining whether crude oil or petroleum products (and chemicals subject to the feedstock tax) have been produced in, entered into, or exported from the United States, the term United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any possession of the United States. The United States also includes the Outer Continental Shelf areas and foreign trade zones located within the United States. There is no exception for bonded petroleum products. Revenues from the petroleum tax are not paid to Puerto Rico or the Virgin Islands under the cover over provisions of section 7652 of the Code.

Present law specifies that the petroleum tax is to be imposed only once with respect to any petroleum product. Thus, anyone who is otherwise liable for the tax may avoid payment by establishing that the tax already has been imposed with respect to the product.

Amounts equivalent to the revenues from the petroleum tax are deposited in the Superfund, through September 30, 1985.

The petroleum tax is scheduled to expire under present law after September 30, 1985. Present law also contains provisions which

would have temporarily triggered-off the tax had revenues accumulated faster than a specified rate. If on September 30, 1983, or September 30, 1984, (1) the unobligated balance in the Superfund had exceeded $900 million, and (2) the Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, had determined that such unobligated balance would exceed $500 million on September 30 of the following year (if no tax was imposed under section 4611 or section 4661 of the Code during the calendar year following the first date referred to above), then no tax would have been imposed during the first calendar year beginning after the first date referred to above. (As of September 30, 1984, the unobligated balance in the Superfund was $295 million.) Further, the authority to collect the tax terminates should cumulative receipts from the petroleum and chemical taxes reach $1.38 billion (sec. 303 of CERCLA). (As of September 30, 1984, cumulative receipts from these taxes amounted to $0.863 billion.)

Tax on chemical feedstocks

Present law (sec. 4661 of the Code) imposes an excise tax on the sale or use of 42 specified substances ("chemical feedstocks") by the manufacturer, producer, or importer thereof.[3] These chemical feedstocks generally are intrinsically hazardous or may create hazardous products or wastes when used. The tax is imposed on chemical feedstocks manufactured in the United States or entered into the United States for consumption, use, or warehousing. The tax rates are specified per ton of taxable chemical, and vary from 22 cents to $4.87 per ton. In the case of a taxable chemical which is a gas (e.g., methane), the tax is imposed on the number of cubic feet of such gas which is equivalent to 2,000 pounds on the basis of molecular weight. (See Table 1 for a list of taxable chemical feedstocks and applicable tax rates under present law.)

Table 1.—Present Law Excise Tax on Chemical Feedstocks

Chemical feedstock	Tax rate (per ton)
Organic substances:	
Acetylene	$4.87
Benzene	4.87
Butadiene	4.87
Butane	4.87
Butylene	4.87
Ethylene	4.87
Methane	3.44
Napthalene	4.87
Propylene	4.87
Toluene	4.87
Xylene	4.87
Inorganic substances:	
Ammonia	2.64

[3] Under proposed regulations, isomers of xylene are taxable on their use of sale.

Table 1.—Present Law Excise Tax on Chemical Feedstocks—Continued

Chemical feedstock	Tax rate (per ton)
Antimony	4.45
Antimony trioxide	3.75
Arsenic	4.45
Arsenic trioxide	3.41
Barium sulfide	2.30
Bromine	4.45
Cadmium	4.45
Chlorine	2.70
Chromite	1.52
Chromium	4.45
Cobalt	4.45
Cupric oxide	3.59
Cupric sulfate	1.87
Cuprous oxide	3.97
Hydrochloric acid	.29
Hydrogen fluoride	4.23
Lead oxide	4.14
Mercury	4.45
Nickel	4.45
Nitric acid	.24
Phosphorous	4.45
Potassium dichromate	1.69
Potassium hydroxide	.22
Sodium dichromate	1.87
Sodium hydroxide	.28
Stannic chloride	2.12
Stannous chloride	2.85
Sulfuric acid	.26
Zinc chloride	2.22
Zinc sulfate	1.90

The tax rates on petroleum and chemical feedstocks were set to achieve a $1.6 billion Superfund program over five years, and to allocate 65 percent of the tax burden to petrochemicals, 20 percent to inorganic chemicals, and 15 percent to petroleum. This allocation was based on the respective proportions of wastes (derived from these chemicals) found in hazardous waste sites (based on data available in 1980). In addition, the chemical feedstock tax rates were limited to 2 percent of wholesale price (based on data available in 1980).

Present law provides six exemptions from the tax on chemical feedstocks. Four of these exemptions were provided in CERCLA as enacted in 1980, and two exemptions were added by the Tax Reform Act of 1984. First, in the case of butane and methane, the tax is not imposed if those substances are used as a fuel. (If those substances are used other than as a fuel, for purposes of the tax,

the person so using them is treated as the manufacturer.) A second exemption is provided for nitric acid, sulfuric acid, and ammonia (and methane used to produce ammonia) used in the manufacture or production of fertilizer or directly applied as fertilizer. Third, present law provides an exemption for sulfuric acid produced solely as a byproduct of (and on the same site as) air pollution control equipment. Fourth, any substance is exempt to the extent it is derived from coal.

The Deficit Reduction Act of 1984 (P.L. 98-369) added two further exemptions to the tax on chemical feedstocks. First, the 1984 Act provided an exemption for petrochemicals otherwise subject to the tax (i.e., acetylene, benzene, butane, butylene, butadiene, ethylene, methane, naphtalene, propylene, toluene, and xylene) which are used for the manufacture or production of motor fuel, diesel fuel, aviation fuel, or jet fuel. (The petroleum tax continues to apply to domestic crude oil or imported petroleum products used for these purposes.) This exception applies if the otherwise taxable substance is (1) added to a qualified fuel, (2) used to produce another substance that is added to a qualified fuel, or (3) sold for either of the uses described in (1) or (2) above. Second, the 1984 Act provided that the transitory existence of cupric sulfate, cupric oxide, cuprous oxide, zinc chloride, zinc sulfate, barium sulfide or lead oxide during a metal refining process is not subject to tax if the compound exists in the process of converting or refining non-taxable metal ores or compounds into other (or more pure) non-taxable compounds. (If a substance is removed in the refining process, tax is imposed even if the substance is later reintroduced to the refining process.) These provisions were effective as if enacted as part of CERCLA.

Under present law, if a taxpayer uses a taxable chemical prior to any sale, the tax is imposed as if the chemical had been sold. When a taxable chemical is used to manufacture or produce a second taxable chemical, an amount equal to the tax paid on the first chemical is allowed as a credit or refund (without interest) to the manufacturer or producer of the second chemical (but not in an amount exceeding the tax imposed on the second chemical). Thus, the imposition of tax more than once on the same substance is avoided.

Amounts equivalent to the revenues from the tax on chemical feedstocks are deposited in the Superfund, through September 30, 1985.

The tax on chemical feedstocks is scheduled to expire, together with the petroleum tax, after September 30, 1985, with a provision for earlier termination if the unobligated balance in the Superfund had exceeded $900 million. Further, the authority to collect the tax terminates should cumulative receipts from the petroluem and chemical taxes reach $1.38 billion (sec. 303 of CERCLA).[4]

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[4] These termination provisions are explained in greater detail in the previous section on the petroleum tax.

2. Post-closure Liability Trust Fund and Tax

Post-closure Liability Trust Fund

In addition to the Superfund, CERCLA established the Post-closure Liability Trust Fund in the United States Treasury. The Post-closure Liability Trust Fund is to assume completely the liability, under any law (including the liability provisions of CERCLA), of owners and operators of hazardous waste disposal facilities granted permits and properly closed under subtitle C of the Resource Conservation and Recovery Act ("RCRA") (Title II of the Solid Waste Disposal Act).[5]

This transfer of liability to the Trust Fund may take place after (1) the owner and operator of the facility has complied with the requirements under RCRA which may affect the performance of the facility after closure, (2) the facility has been closed in accordance with the regulations and the conditions of the permit, and (3) the facility has been monitored (as required by the regulations and permit) for a period not to exceed 5 years after closure to demonstrate that there is no substantial likelihood that any migration off site or release from confinement of any hazardous substance or other risk to public health or welfare will occur (sec. 107(k) of CERCLA). The transfer of liability is to be effective 90 days after the owner or operator of the facility notifies the Administrator of the Environmental Protection Agency (and the State, if it has an authorized program) that the required conditions have been satisfied. No liabilities have yet been transferred to the Post-closure Trust Fund under the present law.

In addition to payment of damages and cleanup expenses for such sites, the Post-closure Liability Trust Fund also may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons, after the period of monitoring required by RCRA, for facilities meeting the applicable transfer of liability requirements. The Trust Fund does not assume the legal liability of waste generators or transporters.

As in the case of the Superfund, claims against the Post-closure Liability Trust Fund may be paid only out of this Trust Fund. If, at any time, claims against this Trust Fund exceed the balance available for payment of those claims, then the claims are to be paid in full in the order in which they are finally determined.

The Post-closure Liability Trust Fund is subject to the same administrative provisions as the Superfund, including the right to borrow limited amounts from the Treasury as repayable advances.

Tax on hazardous wastes

Present law (sec. 4681 of the Code) imposes an excise tax ("post-closure tax") of $2.13 per dry-weight ton on the receipt of hazardous waste at a qualified hazardous waste disposal facility. The tax applies only to hazardous waste that will remain at the facility after the facility is closed. The tax is imposed on the owner or operator of the qualified hazardous waste disposal facility. It was in-

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[5] RCRA provides for the regulation and control of operating hazardous waste disposal facilities, as well as the transportation, storage, and treatment of these wastes. Permits generally are required under RCRA for hazardous waste treatment, storage, and disposal facilities.

tended that amounts equivalent to the revenues from this tax would be deposited into the Post-closure Liability Trust Fund.

For purposes of the post-closure tax, the term hazardous waste means any waste (1) having the characteristics identified under section 3001 of the Solid Waste Disposal Act, as in effect on December 11, 1980 (other than waste the regulation of which had been suspended by Congress on that date), and (2) which is subject to reporting and recordkeeping requirements under the Solid Waste Disposal Act as in effect in that date. Qualified hazardous waste disposal facilities are facilities which have received as permit or been accorded interim status under the Solid Waste Disposal Act.

The post-closure tax applies to the receipt of hazardous waste after September 30, 1983. However, if as of September 30 of any calendar year after 1983, the unobligated balance of the Post-closure Liability Trust Fund had exceeded $200 million, no tax would have been imposed during the following calendar year. Further, authority to collect the tax terminates (1) should cumulative receipts from the petroleum and chemical taxes, described in the previous section, reach $1.38 billion, or, (2) if earlier, at Septemer 30, 1985 (sec. 303 of CERCLA)

3. Industrial development bonds for solid waste facilities

Present law provides that interest on industrial development bonds ("IDBs") is tax-exempt only if (1) the bonds are issued for certain exempt purposes, or (2) the bonds qualify as small issue IDBs.[6] One of the exempt purposes for which tax-exempt IDBs may be issued is to finance solid waste disposal facilities (sec. 103(b)(4)(E)). Treasury regulations provide that solid waste disposal facilities for this purpose include property (or a portion of property) used for the collection, storage, treatment, utilization, processing, or final disposal of solid waste. However, solid waste disposal facilities do not include facilities for collection, storage, or disposal of liquid or gaseous waste, unless such facilities are functionally related and subordinate to another qualifying facility. The regulations further provide that solid waste includes garbage, refuse, and other discarded solid materials (including materials resulting from industrial, commerical, and agricultural operations, and form community activities), but does not include solids or dissolved material in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved material in irrigation return flows or other common water pollutants (Treas. Reg. sec. 1.103-8(f)(2)).

Present law further allows tax-exempt IDBs to be used to finance public or private air or water pollution control facilities (sec. 103(b)(4)(F)). Proposed Treasury regulations provide that pollution control facilities for this purpose do not include property which is:

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[6] The small issue exemption applies to bonds used for the acquisition, construction, or improvement of land or depreciable property, where the aggregate authorized face amount of the issue (including certain outstanding prior issues) is $1 million or less. Alternatively, the aggregate face amount of the issue, together with the aggregate amount of related capital expenditures during the six-year period beginning three years before the date of the issue and ending three years after that date, may not exceed $10 million. The exemption for small issue IDBs expires December 31, 1986 (for bonds used to finance other than manufacturing facilities), or December 31, 1988 (for bonds used to finance manufacturing facilities).

(1) designed to prevent the release of pollutants in a major accident; (2) used to control materials or heat that traditionally have been controlled because their release would constitute a nuisance; or (3) used to control the release of hazardous materials or heat that would cause an immediate risk of substantial damage or injury to persons or property (Proposed Treas. Reg. sec. 1.103–8(g)(2)).

The Deficit Reduction Act of 1984 (P.L. 98–369) imposed statewide volume limitations on most IDBs and student loan bonds (including IDBs to finance solid waste disposal or pollution control facilities). The amount of all such bonds which may be issued in a State during any given year is equal to the greater of (1) $150 for each resident of the State, or (2) $200 million.

B. Reasons for Change

In 1980, Congress created a major Federal program to clean the worst abandoned hazardous waster sites in the country by enacting the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). CERCLA provided a 5-year, $1.6 billion cleanup program financed by $0.22 billion of general revenues and $1.38 billion of excise taxes on petroleum and specified chemical feedstocks. It was intended that the Hazardous Substance Response Trust Fund ("Superfund") would be supplemented by amounts collected from enforcement and cost recovery actions against responsible parties, and ultimately would become self-financing. Under CERCLA, the petroleum and chemical feedstock excise taxes were imposed through September 30, 1985.

It is now clear that the current Superfund program will not be adequate to achieve the goals of the 1980 Act. The Environmental Protection Agency ("EPA") estimates that only 15 of the 538 sites now on the National Priority List will be cleaned by September 30, 1985, and that the unobligated balance of the Superfund will be less than $10 million on that date. Moreover, Title I of S. 51 ("Superfund Improvement Act of 1985") substantially increases the financial requirements of the Superfund. Among other things, S. 51 would: expand the responsibilities of the Agency for Toxic Substances and Disease Registry; increase the Federal share of costs for cleaning certain State-owned sites and for treating contaminated ground water; increase the cost of the Love Canal buyout; require the Superfund to pay interest on loans of relocated businesses; require the EPA to maintain a Hazardous Substances Inventory; and would provide a right for citizens to sue in Federal court to enforce requirements under the Act and to seek the performance of nondiscretionary duties under the Act by the President or delegees.

S. 51, as reported by the Environment and Public Works Committee, provides $7.5 billion of funding ($1.03 billion from general revenues and $6.47 billion from unspecified taxes) over the 1986–1990 fiscal year period. In the Finance Committee's judgment, the $7.5 billion funding level (including interest credited on Superfund balances but not taking into account amounts collected from enforcement and cost recovery actions) will be necessary to finance the cost of the expanded Superfund program provided in this bill over the five year period. The current estimates of tax revenues

and Trust Fund interest provided by the committee amendment ($6.9 billion and $0.5 billion, respectively), add to slightly less than the desired funding level. However, revenue projections for up to 5 years into the future may be somewhat uncertain because of unforeseen movements in the economy so that the committee amendment may generate the desired funding. In any event, the committee is committed to the $7.5 billion a target and expects to provide additional revenues should a shortfall develop.

In financing the substantial increase in the Superfund program, the Finance Committee sought to broaden the tax base, to minimize adverse trade effects, and to limit the impact of the program on the Federal deficit.

First, beginning in fiscal year 1986, there would no longer be an authorization of general revenue contributions to the Superfund. In light of the large budget deficits projected over the next five years, the Committee felt that the programs paid for from the Superfund should be funded without adding to those deficits.[7]

Second, although general revenue appropriations are not recommended, the committee is of the view that the cleanup of abandoned hazardous waste sites is a broad societal problem extending beyond the chemical and petroleum industries. Thus, the committee recommended a new excise tax on all manufacturing sectors of the economy. The Superfund Excise Tax ("SET") on manufacturers was structured as an indirect tax (i.e., on goods rather than on persons). Under the General Agreement on Tariffs and Trade ("GATT"), to which the United States is a signatory, indirect taxes generally may be imposed according to the "destination principle," (i.e., rebated on export and imposed on imports). By structuring the SET as a destination-principle tax, the committee sought to minimize the adverse effects of the tax on the U.S. merchandise trade balance. Given the $123 billion merchandise trade deficit in 1984, and projections for a larger trade deficit in 1985, the committee believes that any new tax to finance the Superfund must not undermine the competitiveness of U.S. exports nor favor imports over domestic production. The imposition of the Superfund Excise Tax is limited to manufacturers and producers (including mining because the committee believes that there is a reasonable nexus between these activities and the generation of the hazardous wastes that are found at Superfund sites. The Superfund Excise Tax is limited to manufacturers and producers with over $5 million of sales and lease income. To further reduce administration and compliance costs, Superfund Excise Tax liability generally is computed with reference to manufacturers' inventory costs, as computed for income tax purposes, rather than on the basis of tax payments shown on special invoices.

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[7] The Superfund Improvement Act of 1985, as reported by the Committee on Environment and Public Works, contains a provision that expands the scope of the Superfund program to include a 5-year demonstration program of assistance to victims of exposure to hazardous substances released into the environment. Under the bill, victim assistance grants are added to the list of permissible uses of the Superfund, but only the general revenue contribution to the Superfund is available for this purpose. Since the Finance Committee amendment to S. 51 contains no general revenue authorization, the bill, as amended, contains no funds for victim assistance grants.

Third, under current law, imports of petroleum and 42 chemical feedstocks are taxed at the same rate as domestic production, but exports of domestic chemicals are not exempt from tax. The committee exempted from tax exports chemical feedstocks and petroleum to limit the adverse effect of these taxes on U.S. trade in chemicals.

The committee did not increase the list of taxable feedstocks nor did it raise the rate of tax on any feedstock. The decision not to increase the revenue contribution from the excise taxes on petroleum and chemical feedstocks was based on the committee's view that (1) responsibility for hazardous waste celanup extends beyond the chemical and petroleum industries, and (2) damaging trade effects would occur at higher excise tax rates. Even though imports of domestically taxed feedstocks are subject to tax at the border (e.g., ethylene), many U.S. chemical companies are concerned that foreign-manufactured derivatives (e.g., polyethylene; a derivative of ethylene) can be imported tax-free. To eliminate the trade advantage of chemical derivative imports would require that tax be imposed on all derivatives: from chemical intermediates (e.g., polyethelene to final consumer products (e.g., plastic bags). Such a tax on chemical derivatives would be costly and complex to administer.

Fourth, the committee exempted chromium, cobalt, and nickel from the feedstock tax where these metals are diverted, recovered, or produced from solid waste (other than waste from a metal smelting, refining, or extraction process). Imports of recycled metals are not exempt. The intent of this amendment is to encourage the recycling of these metals, as opposed to land disposal. The amendment also favors recycling over both imported and primary domestic production of these metals.

Fifth, the committee directed the Genral Accounting Office ("GAO") to study alternative taxes for financing the Superfund, particularly taxes on hazardous wastes, that might reduce the generation and disposal of such wastes. The committee is concerned that the ongoing generation and disposal of hazardous waste may result in future Superfund sites requiring additional expenditures from the Superfund. The committee anticipated that the GAO would take account of the study conducted by the Congressional Budget Office on hazardous waste management policy alternatives.

The committee agreed to study, rather than enact, a tax on hazardous waste at this time because it was recognized that an improperly designed tax system might have harmful economic and environmental impacts. There also was concern that, given the present state of knowledge in the subject area, a tax on hazardous waste might not be a stable revenue source for financing the Superfund program. The committee was further concerned that exemptions from a hazardous waste tax for treatment and recycling processes might be abused, and could create an economic incentive for taxpayers to use less environmentally sound technologies. The committee also was concerned that a hazardous waste tax, like the chemical feedstock tax, could raise the cost of manufacturing certain products in the United States. This would effectively tax exports and subsidize imports of products whose production involves hazardous waste generation. Unlike the current feedstock tax, the economic burden of a hazardous waste tax might not be limited to

a small percentage of production cost, and could erode significantly the competitiveness of certain U.S. exports.

In addition, the committee had questions regarding the adequacy of current environmental reporting and recordkeeping for tax administration pruposes, and the effect of disparities among State regulatory practices on a Federal hazardous waste tax. Another concern raised before the committee was that the imposition of a tax on hazardous waste management facilities could create a disincentive for complying with regulations under the Resource Conservation and Recovery Act ("RCRA") and could penalize hazardous waste generators, transporters, and disposers who accurately report and properly dispose of wastes. Imposition of a hazardous waste tax could be counterproductive if it resulted in an increase in "midnight" dumping and other illegal or unsafe disposal practices.

The committee repealed, effective October 1, 1985, the Post-closure Liability Trust Fund; it did not extend the post-closure disposal tax enacted in 1980; and it transferred the remaining balance of the Post-closure Liability Trust Fund to the Superfund. Under current law, the Post-closure Liability Trust Fund transfers legal liability of owners and operators of private disposal sites to the Federal Government, provided that such sites are operated and closed according to RCRA requirements, and the EPA determines, five years after closure, that there is no substantial likelihood of future release. In exchange for assuming such liability, a tax of $2.13 per dry weight metric ton was imposed on the disposal of hazardous wastes at qualified facilities. In effect, the post-closure tax is in lieu of an insurance premium for the coverage of all future claims arising from health and property damage caused by a hazardous waste facility.

The committee was concerned that the liability that ultimately could be transferred to the Federal Government under the post-closure provision is unlimited. Such liability is governed in part by State and local laws which could change, and could cover such items as medical expenses, pain and suffering, and income losses. Thus, the amount of claims against the Post-closure Fund could be extremely large, and there is concern that the Post-closure Fund would have inadequate resources to compensate the victims of even a few releases. This could necessitate a large tax increase or use of general revenues to pay these claims. The committee also was concerned that the transfer of liability to the Government may diminish incentives to construct durable disposal facilities. Moreover, the Post-closure Fund appears to subsidize hazardous waste disposal relative to treatment facilities. Further, because storage facilities do not pay the tax, a storage facility which switched its status to that of a disposal facility just before closure could transfer liability to the Post-closure Fund without ever having paid the tax. Other such mismatches between the tax and eligibility for transfer of liability are possible; for example, a facility with an interim status permit may be required to pay the disposal tax but, if it never receives a final RCRA permit, would never be able to transfer liability to the Fund. In addition, the Post-closure Fund does not relieve waste generators and transporters from legal liability for damages caused by wastes deposited at a hazardous waste disposal facility. Finally, under current law, the Federal Government can be used

by any party that claims an injury as a result of exposure to a release from a disposal facility for which the Federal Government is liable. The future cost of litigation under this provision could be high.

Under current law, certain solid waste disposal facilities qualify for tax-exempt industrial development bond financing. The committee decided that hazardous waste treatment facilities generally should be eligible for such financing on equal terms. This amendment is intended to encourage the construction of hazardous waste treatment facilities that meet the standards of the Resource Conservation and Recovery Act for the safe treatment of hazardous waste.

C. Explanation of Provisions

1. The Hazardous Substance Superfund (Sec. 204 of Title II and New Sec. 9505 of the Code)

The committee amendment redesignates the "Hazardous Substance Response Trust Fund" as the "Hazardous Substance Superfund," and continues and expands the Superfund by allocating to the Fund amounts equivalent to the revenues derived from the new Superfund Excise Tax on manufacturers (discussed below), together with the taxes on petroleum and chemical feedstocks.[8] No further amounts are authorized to be appropriated to the Superfund from general revenues. Other amounts allocated to the Fund under present law (including penalties, punitive damages, and amounts recovered on behalf of the Fund) are not affected by the committee amendment. In addition, the balance in the Post-closure Liability Trust Fund as of September 30, 1985, is to be transferred to the Superfund, in conjunction with the repeal of that Trust Fund (discussed below).

The current estimates of tax revenues and Superfund interest ($6.9 billion and $0.5 billion, respectively, add to slightly less than the desired funding level of $7.5 billion over a five-year period. The committee is committed to the $7.5 billion target and expects to provide additional revenues should a shortfall develop.

Under the committee amendment, Superfund monies continue to be available for expenditures incurred under section 111 of CERCLA (as in effect on the date of enactment of the committee amendment) in connection with releases or threatened releases of hazardous substances into the environment, including: (1) response costs; (2) related costs described in section 111(c) of CERCLA; (3) claims for injury to, or destruction of, natural resources belonging to or controlled by the Federal or State governments; and (4) compensable but unsatisfied claims arising under section 311 of the Clean Water Act.[9] As under present law, not more than 15 percent of appropriated amounts may be used for the payment of natural resource damage claims (item (3) above).

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[8] Amounts in the Hazardous Substance Response Trust Fund as of September 30, 1985, are also allocated to the renamed Superfund.

[9] Because no general revenues are to be appropriated after Setpember 30 1985 to the Superfund under the Finance Committee amendment, no Fund moneys will be available to fund the victim's assistance demonstration program included in S. 51, as reported by the Committee on Evironment and Pubilc Works (sec. 129 of S. 51 and sec. 111(c) of CERCLA).

The committee amendment relocates the Superfund provisions of CERCLA in the trust fund subtitle of the Internal Revenue Code (Subtitle I). As under present law, the Secretary of the Treasury will continue to manage the Superfund, and to report annually to Congress on the financial condition and operations of the Superfund (Code sec. 9602). The Superfund administrative provisions are also similar to present law. However, under the committee amendment, the Superfund is to have geneal authority to borrow from the Treasury (as repayable advances) amounts not exceeding estimated Superfund revenues during the succeeding 12 months. This authority is not to be limited (as it is under present law) to catastrophic spills or natural resource damage claims (not more than 15 percent of borrowed funds may be used to pay natural resource damage claims, however). All such advances must be repaid on or before December 31, 1990, and no advance may be made after September 30, 1990.

The trust fund provisions are effective on October 1, 1985.

2. Tax Provisions

a. Excise taxes on petroleum and chemical feedstocks (sec. 202 of title II, secs. 4611, 4661, and 4662 of the Code, and sec. 303 of CERCLA)

Extension of present law taxes

The committee amendment continues the taxes on petroleum (Code sec. 4611) and chemical feedstocks (sec. 4661), at their present law rates (see Table 1), through September 30, 1990. A special rule would provide for earlier suspension or termination of these taxes, together with the new Superfund excise tax on manufacturers, if the unobligated Superfund balance were to exceed $1.5 billion (discussed below). In addition, authority to collect the petroleum, chemical feedstock, and manufacturer taxes would terminate when and if cumulative Superfund receipts (including interest credited on Fund balances but not recoveries or other non-tax receipts) total $7.5 billion.[10]

Exemptions from chemical feedstocks tax

The committee amendment retains the present law exemptions to the tax on chemical feedstocks (sec. 4662) and adds the following exemptions.

Exports of taxable chemicals.—The committee amendment provides that the tax on chemical feedstocks is not to apply to feedstocks that are exported from the United States. In particular, the committee amendment exempts from tax any feedstock that is sold by the manufacturer or producer for export, or for resale to a second purchaser for export. If the purchaser cannot certify in advance that a feedstock will be exported, or if a tax has otherwise been paid on the exported feedstock, the person who paid the tax

[10] In conjunction with these changes, the committee amendment repeals the termination provisons of present law (sec. 4611(d)), which terminate the petroleum and chemical feedstock taxes if the unobligated balance in the Hazardous Substance Response Trust Fund exceeds specified amounts. The amendment also repeals section 303 of CERCLA; that section provides for termination of the environmental excise taxes when aggregate taxes collected exceed $1.38 billion.

could claim a refund or credit (without interest) for the amount of the tax previously paid. Such person would be required to pay the tax amount refunded or credited to the exporter, or to obtain the exporter's written consent to his receiving the credit or refund. The Treasury is authorized to prescribe necessary regulations for administering these provisions.[11]

Substances used to produce animal feed.—An exemption from the feedstock tax is provided for nitric acid, sulfuric acid, or ammonia (or methane used to produce ammonia) used in a qualified animal feed use by the manufacturer, producer, or importer, or else sold for use (or for resale for ultimate use) in a qualified animal feed use. Qualified animal feed use means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements. Under Treasury regulations, if tax is paid and a qualifying substance is subsequently used in a qualified animal feed use, the person so using the substance is entitled to a credit or refund (without interest) of the tax paid. Conversely, if an exemption is allowed and a substance is subsequently sold or used for a non-animal feed purpose, the person so selling or using the substance is to be subject to tax as if such person had manufactured the substance.

Certain recycled metals.—An exemption is provided under the committee amendment for nickel, chromium, or cobalt which is diverted, recovered, or produced from solid waste (as defined under section 1004 of the Solid Waste Disposal Act) as part of a recycling process (and not as part of the original manufacturing or production process). The exemption does not apply to metals which are diverted, recovered, or produced from the byproduct, coproduct, or waste of a metal refining, smelting, or other extraction process.

The recycling exemption does not apply to any taxpayer for any period during which the taxpayer has been notified by the Environmental Protection Agency that the taxpayer is a potentially responsible party for a site that is listed on the National Priorities List (maintained by EPA pursuant to section 105 of CERCLA) unless the taxpayer is in compliance with all orders, decrees, or judgments issued againt the taxpayer in any action or proceeding with respect to the listed site (including actions or proceedings under CERCLA or the Solid Waste Disposal Act). The exemption also does not apply to any imported taxable substance.

For purposes of the credit for previously taxed chemical feedstocks, recycled metals that are exempt under this provision are treated as previously taxed (effectively preventing the imposition of further tax on the metal).

Effective date

The extension of the petroleum and chemical feedstocks taxes, and the amendments to the chemical feedstocks tax, are effective on October 1, 1985.

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[11] Rules similar to the rules of sec. 4221(b) (regarding sales for further manufacture or export for excise tax purposes) are to apply in determining proof of export.

b. Superfund excise tax (sec. 203 of title II and new Chapter 30 of the Code (secs. 4001–4004, 4011–4013, 4021–4023, and 4031))

General rules

The committee amendment establishes a new Superfund Excise Tax on manufacturers. The tax, which would be at a 0.08 percent rate, would be imposed on the sale, lease, or import of tangible personal property by the manufacturer or importer of the property. Exports of tangible personal property would be exempt, as would the sale, lease, or import of unprocessed agricultural, food, and timber products. To avoid the imposition of duplicative taxes in multi-stage production, manufacturers would be allowed a credit based on the amount of Superfund excise tax included in their purchases of tangible personal property (e.g., materials and equipment) allocable to the manufacture of tangible personal property. Small manufacturers (with less than $5 million of taxable receipts) and small import shipments (under $10,000) would be exempt from the tax.

Imposition of the tax

Under the committee amendment, a new Superfund Excise Tax is imposed on the sale or lease (in connection with a trade or business) of tangible personal property in the United States [12] by the manufacturer. The tax rate is 0.08 percent ($8 per $10,000 of taxable amount). The taxable amount in the case of a sale is the price (in money or the fair market value of other consideration) charged to the purchaser by the seller, including items payable to the seller during the taxable period with respect to the transaction (including Federal and State sales and excise taxes, other than the Superfund Excise Tax, imposed on the transaction). In the case of a lease by the manufacturer of the taxable property, the taxable amount is the gross lease payments received during the taxable period (including Federal and State sales and excise taxes, other than Superfund Excise Tax, imposed on the lease). The tax applies to lease payments received (or considered received under the partial year proration rules described below) during the period the Superfund Excise Tax is in effect, regardless of when the lease was entered into. The manufacturer is liable for the tax.

The tax is also imposed on the import of tangible personal property into the customs territory United States by the importer of the tangible personal property. The taxable amount is the customs value plus customs duties (and any other duties or any excise taxes other than the Superfund Excise Tax) that may be imposed. The tax on imports is to be collected in the same manner as duties by the customs service. Shipments for which the taxable amount is less than $10,000 are exempt from the tax. The importer is liable for the tax.

The Superfund Excise Tax is deductible against Federal income tax.

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[12] For these purposes, the United States includes the 50 States, the District of Columbia, and any possession of the United States.

Definitions and special rules

Manufacturing.—Manufacturing includes the production of tangible personal property, including raw materials. The committee intends that the term "manufacturing" be read broadly to include mining and producing. The categories of mining and manufacturing establishments set forth in Divisions B and D of the Standard Industrial Classification ("SIC") Manual, published by the Office of Management and Budget, generally reflect the committee's intent as to the proper line separating manufactuing from nonmanufacturing activity.

Certain activities are not considered to be manufacturing under the committee amendment. Manufacturing does not include services furnished incidental to the storage or transportation of property, the preparation of food in a restaurant or other retail food establishment, or the incidental preparation of property by a retailer or wholesaler, including routine assemblage. The SIC Manual generally excludes from manufacturing agriculture, forestry, fishing, and construction.

Tangible personal property.—Tangible personal property, for purposes of this tax, generally includes all property that is not either real property or intangible personal property. It includes natural gas and other gaseous materials. It does not include unprocessed agricultural products (including timber) nor unprocessed food products (including fish) nor electricity. The committee intends that Treasury regulations coordinate the definitions of unprocessed agricultural products and unprocessed food products with the 5-digit tariff code for purposes of exempting from this tax imports of these items. Tangible personal property also does not include mineral rights (including oil or gas rights), since these interests are themselves considered to be real property. Minerals (or oil or gas) are, however, considered to be tangible personal property after they have been mined or otherwise extracted.

Containers, transportation charges, constructive sales price.—The committee amendment provides that the Secretary of the Treasury is to issue regulations specifying that charges for coverings, containers, and packing are included in the taxable amount. The regulations are also to provide that transportation (including pipeline transportation) and related charges (including insurance and installation) and Superfund Excise Tax (but no other excise tax) are excluded from the taxable amount (but only to the extent the amount of the transportation and related charges is established to the satisfaction of the Secretary in accordance with regulations).

The regulations are also to provide rules establishing a constructive sales price when, for example, a manufacturer sells directly at retail or sells only or primarily to related persons.

These regulations are to be similar to the rules of section 4216(a) and (b) (relating to containers, packing, and transportation charges, and constructive sales prices for excise tax purposes).

Timing of receipt and expenses.—In computing the taxable amount and qualified inventory costs of a taxpayer, an amount shall be treated as recognized, paid, or incurred at the time it is recognized, paid, or incurred under the taxpayer's method of ac-

counting for Federal income tax purposes (including, for example, the installment method).

Credit against tax

The committee amendment provides manufacturers a credit against the Superfund Excise Tax that is the greater of two amounts:

(1) The first amount is equal to the Superfund Excise Tax imposed on sales and leases (but not imports), to the extent it does not exceed $4,000.[13] The committee amendment provides that persons under common control (whether corporations, partnership, proprietorships, or other entities) are to be treated as one taxpayer for purposes of the standard $4,000 credit. The rules of section 52 (originally drafted for purposes of the targeted jobs credit) apply to determine whether persons are under common control. Thus, a manufacturer (but not an importer) with a taxable amount of $5 million or less would be exempt from the tax ($5 million times 0.08 percent equals $4,000).

(2) The second amount is equal to the qualified inventory costs of the taxpayer multiplied by .08 percent.

Qualified inventory costs are direct material and other costs (including the Superfund Excise Tax on such materials) of tangible personal property included in the manufacturer's cost of goods sold for income tax purposes. Qualified inventory costs include amounts paid or incurred for the acquisition of tangible personal property incident to, and necessary for, production or manufacturing operations or processes (e.g., equipment or manufacturing operations or processes (e.g., equipment), if depreciation of such property is included in the manufacturer's costs of goods sold. Depreciation and amortization deductions are not included in qualified inventory costs. Qualified inventory costs also include the cost of utilities subject to the Superfund Excise Tax. Qualified inventory costs include lease payments on qualifying equipment paid or incurred during the period the Superfund Excise Tax is in effect. Qualified inventory costs do not, however, include any cost or amount with respect to an item acquired before the effective date of the tax. Additionally, qualified inventory costs do not include the inventory costs of any non-manufacturing operation. Qualified inventory costs are to be computed in the same manner as these costs are computed for purposes of determining the inventory of manufacturers under section 471 (i.e., full absorption accounting).[14] If the taxpayer uses a different method of accounting for computing income taxes, then the method of inventory allocation for Superfund excise tax purposes shall conform to the method of allocation for income tax purposes, unless the Secretary provides otherwise in regulations.

The amount of the credit allowed to be claimed for a particular taxable period may not exceed the liability for the Superfund Excise Tax. The amount by which the credit exceeds the liability

[13] This amount is prorated for taxable periods that do not include 12 full months. Thus, for exampie, a manufacturer subject to this tax for 6 months of a 12 month taxable year would be entitled to a maximum credit of $2,000 under this provision.

[14] However, as described above, capital costs are expensed rather than depreciated or amortized.

for a particular taxable period may be carried to the next taxable period and added to the credit potentially allowable for that period. If, for example, a manufacturer had qualified inventory costs of $11 million in a taxable period but received $10 million in sales or lease receipts, the taxpayer would owe no Superfund Excise Tax for that taxable period and would carry over to the next taxable period a credit of $800. (Because the credit for small manufacturers is equal to the lesser of $4,000 or the tax imposed, no amount of the standard $4,000 credit can be carried over to future years.)

Exempt transactions

The committee amendment exempts several types of transactions from the Superfund Excise Tax. First, the Superfund Excise Tax is not imposed on the sale of any property that is to be exported outside the United States, as provided in regulations. The committee intends that these regulations follow the principles of section 4221(b) (relating to excise taxes), and the regulations thereunder, for purposes of proving that an article has been exported. In particular, the committee intends that Treasury regulations adopt the rule in section 4221(b) that provides that the exemption from tax ceases to apply to the sale of an article unless, within six months of the earlier of either the date of sale or date of shipment by the manufacturer, the manufacturer receives proof that the article has been exported.

The committee amendment also exempts from the Superfund Excise Tax the sale or lease of tangible personal property by the United States or any other governmental entity or by an organization that is exempt from the income tax (unless the transaction is part of an unrelated trade or business within the meaning of section 513). Imports by governmental entities and organizations that are exempt from the income tax are subject to the Superfund excise tax.

The committee amendment also exempts small imports from this tax. A small import is any shipment (whether formal or informal) the taxable amount of which is less than $10,000. The committee intends that "shipment" be interpreted for purposes of this tax in the same manner that it is generally interpreted for customs purposes. Thus, a shipment is generally all articles on one carrier for one consignee on one day.

Time for filing returns and related administrative matters

Taxpayers are required to file a Superfund Excise Tax return annually, at the same time they file their regular income tax return. Thus, for example, a corporation that has as its taxable year the calendar year would be required to file the Superfund Excise Tax return by March 15 of the following year, which is the same date that its corporate income tax return (Form 1120) is due. As with other tax returns, the Secretary may grant a reasonable extension of time for filing a Superfund Excise Tax return (*see* sec. 6081).

The committee amendment provides that a manufacturer who has less than $5 million of annual sales or lease receipts is not re-

quired to file a Superfund Excise Tax return.[15] These taxpayers have no tax liability because of the credit mechanism (described above). In addition, the Secretary may provide by regulations that certain other taxpayers with more than $5 million of sales or lease receipts, but who may have no tax liability, need not file returns.

The taxable period for which liability for the Superfund Excise Tax must be determined is the taxable person's taxable year for purposes of the income tax. If the taxpayer does not have a taxable year for purposes of the income tax, then the taxable period for purposes of the Superfund Excise Tax is the calendar year.

The penalties for failure to file a tax return or to pay tax that are applicable to the income tax (sec. 6651) are made applicable to the Superfund Excise Tax. In addition, the civil negligence penalty (sec. 6653(a)) that is applicable to the income tax is made applicable to the Superfund Excise Tax. The criminal penalties of the Code are generally applicable to the Superfund Excise Tax.

The committee amendment generally requires that the Superfund Excise Tax be deposited quarterly. For the first taxable year that a manufacturer is potentially subject to this tax, any manufacturer with $50 million or less of sales or lease payments determined in the prior year is not required to deposit quarterly; these taxpayers may pay the Superfund Excise Tax when they file their returns. In subsequent taxable years, any manufacturer not previously liable for a payment of Superfund Excise Tax will not be required to deposit quarterly. Thus, for example, a manufacturer who paid Superfund Excise Tax for 1986 would be required to deposit quarterly in 1987, whereas a manufacturer not required to pay any Superfund Excise Tax in 1986 would pay the Superfund Excise Tax (if any) for which the manufacturer is liable for 1987 with the manufacturer's return. The existing penalty for failure to make deposits (Code sec. 6656) applies to failures to deposit the Superfund Excise Tax. This penalty will not apply, however, if the manufacturer deposits at least the lesser of 90 percent of the tax due or 100 percent of the previous year's liability.[16]

The tax on imports is to be collected in the same manner as duties by customs agents. Consequently, the committee amendment does not specify deposit rules for the tax on imports.

Revenues from the Superfund Excise Tax are not paid to Puerto Rico or the Virgin Islands or any other possession or territory under the cover over provisions of section 7652 of the Code or similar provisions.

The Secretary of the Treasury is authorized to issue regulations to carry out the purposes of the Superfund Excise Tax.

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[15] This exemption is prorated for taxable periods that do not include 12 full months. Thus, for example, a manufacturer subject to this tax 6 months of a 12 month taxable year would not be required to file a return if it had less than $2.5 million of sales or lease receipts in that taxable year.

[16] A taxpayer may avoid this penalty with respect to any year the taxpayer is liable for Superfund Excise Tax by depositing at least 90 percent of the tax due for that taxable year. A taxpayer may, however, avoid this penalty with respect to a year the taxpayer is liable for this tax by depositing 100 percent of the previous year's liability for this tax only if the taxpayer prorates this amount for a full 12-month period. Thus, if a taxpayer was liable for $100,000 of Superfund Excise Tax for its taxable year July 1, 1985 through June 30, 1986, the taxpayer would be considered to have deposited 100 percent of the previous year's liability by depositing $200,000.

Effective dates

The Superfund Excise Tax applies with respect to taxable amounts received after December 31, 1985. The tax will not apply with respect to amounts received after December 31, 1990. Additionally, the Superfund Excise Tax will not be imposed if the Superfund tax on petroleum and chemical feedstocks is suspended before September 30, 1990, as a result of the termination provisions of the bill. (These termination provisions are discussed in greater detail below.)

The bill provides special rules for any taxable period including December 31, 1985 or December 31, 1990. In the case of such a taxable period, the taxpayer must, in computing its taxable amount and credit for the Superfund Excise Tax, prorate its receipts and purchases on a monthly basis. For example, a taxpayer whose taxable year runs from February 1 to January 31 must, under this special rule, prorate one-twelfth of its receipts and one-twelfth of its purchases as representing those amounts for the period for January 1 through January 31, 1986. In addition, the $4,000 standard credit similarly would be prorated.

c. Termination of taxes (secs. 202(a) and 203(a) of Title II and secs. 4002, 4611(d), and 4661(c) of the Code)

Under the committee amendment, the petroleum and chemical feedstocks taxes are each scheduled to expire after September 30, 1990, and the Superfund Excise Tax on manufacturers is scheduled to expire after December 31, 1990. A special rule would provide for earlier suspension or termination of each of these taxes if, on September 30, 1988 or 1989 (1) the unobligated Superfund balance exceeds $1.5 billion, and (2) the Treasury, after consulting with EPA, determines that this balance will exceed $1.5 billion on the following September 30th if none of these taxes is imposed during the intervening year. The taxes would be suspended for the first calendar year following the date of an affirmative determination (i.e., 1989 or 1990, respectively).

The petroleum, chemical feedstocks, and manufacturing excise taxes would also expire when and if Superfund receipts of tax revenues plus interest credited to the fund (but not including amounts from enforcement and cost recovery actions) total $7.5 billion. If the $7.5 billion total is reached between September 30 and December 31, 1990, then the Superfund Excise Tax would be terminated at that time. Any such expiration of the tax would be based on projections made by the Treasury on a quarterly basis (and at such other times as the Treasury deems appropriate) regarding cumulative taxes and interest projected to be credited to the Fund. In the event of an early termination of the Superfund Excise Tax, the committee amendment specifies that the amount of tax and the amount of any credits against the tax (including qualified inventory credits or the $4,000 credit for small manufacturers) are to be prorated based on the number of days in the taxable period up to and including the termination date. For example, if the tax terminated on July 1, 1990, a calendar year taxpayer would compute its tax based on one-half its otherwise applicable taxable amount and one-half of its otherwise allowable credit. The Treasury is also pro-

vided with regulatory authority to set procedures implementing these early termination provisions.

d. Repeal of Post-closure Liability Tax and Trust Fund (sec. 205 of Title II, secs. 4681 and 4682 of the Code, and sec. 232 of the Hazardous Substance Response Revenue Act of 1980)

The Post-closure Liability Trust Fund is repealed effective October 1, 1985, and the associated hazardous waste disposal tax (Code secs. 4681 and 4682) is not extended beyond September 30, 1985. Amounts in the Post-closure Trust Fund at that time are to be transferred to the Superfund. Thus, under the committee amendment, no funds would be available for the payment of claims potentially arising due to these closed sites.

e. Study of alternative taxes (see. 207 of Title II)

The committee amendment directs the General Accounting Office (GAO) to conduct a study of Superfund financing mechanisms, including the possibility of implementing a tax on disposal of hazardous wastes as an additional or alternative financing source. This study is to consider the effect of a hazardous waste tax on the generation and disposal of hazardous waste. The committee anticipates that the GAO will take account of the study conducted by the Congressional Budget Office on hazardous waste management policy alternatives. The GAO is directed to report to the Finance Committee not later than January 1, 1988, regarding the study described above.

3. Industrial Development Bonds for Hazardous Waste Treatment Facilities (sec. 206 of Title II and sec. 103(b)(4) of the Code)

The committee amendment interest on a tax exemption for industrial development bonds ("IDBs") used to finance facilities for the treatment of hazardous waste. The terms "treatment" and "hazardous waste" for this purpose have the meanings provided under section 1004 of the Solid Waste Disposal Act. The exemption is limited to facilities which are subject to final permit requirements under the Resource Conservation and Recovery Act (RCRA) (subtitle C of Title II of the Solid Waste Disposal Act). IDBs used to finance hazardous waste treatment facilities are subject to the volume and other limitations applicable to IDBs generally.

III. BUDGET EFFECTS OF THE COMMITTEE AMENDMENT AND VOTE OF THE COMMITTEE

A. Budget Effects

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the budget effects of title II of S. 51 as reported by the Committee on Finance.

Estimated Revenue Effects of Title II as Reported by the Committee on Finance, Fiscal Years 1986–91

[In millions of dollars]

Provision	1986	1987	1988	1989	1990	1991	1986–91
Gross revenues to the Superfund:							
Extension of excise tax on petroleum	39	42	42	42	42	3	210
Extension of excise tax on chemical feedstocks	219	240	251	261	270	14	1,255
New Superfund Excise Tax	344	946	1,025	1,112	1,208	796	5,431
Total excise tax revenues to the Superfund	602	1,228	1,318	1,415	1,520	813	6,896
Net increase in budget receipts (after income tax offset) from Superfund taxes	452	921	988	1,061	1,140	610	5,172
IDB's for hazardous waste treatment facilities	−9	−18	−31	−43	−57	−70	−228
Net change in budget receipts	443	903	957	1,018	1,083	540	4,944

B. Vote of the Committee

In compliance with paragraph 7(c) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the vote of the Committee on Finance on the motion to report the committee amendment to title II of S. 51. The committee amendment to title II of S. 51 was ordered favorably reported by a roll call vote of 18 yeas and 1 nay.

IV. REGULATORY IMPACT AND OTHER MATTERS TO BE DISCUSSED UNDER SENATE RULES

A. Regulatory Impact

Pursuant to paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee on Finance makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of title II of S. 51, as reported.

Number of individuals and businesses who would be regulated

Title II of the bill does not involve new or expanded regulation of individuals or businesses. It does, however, impose a new manufacturers excise tax at a low rate (0.08 percent) on manufacturers and producers (including importers) and lessors of tangible personal property. This new Superfund Excise Tax applies to manufacturers

and producers with over $5 million of sales and lease income. This new tax is effective on January 1, 1986.

Economic impact of regulation on individuals, consumers, and businesses

The new Superfund Excise Tax imposed under title II of the bill could involve a slight impact on business costs and consumer prices; however, the new tax is imposed only at a low rate (0.08 percent). Under the destination principle generally used for excise taxes, the Superfund Excise Tax will not apply to exports. The committee amendment also exempt from the new tax the sale or lease of tangible personal property by the United States or any other governmental entity or by a tax-exempt organization (unless the transaction is part of an unrelated trade or business).

The extension under the committee amendment of the petroleum and chemical feedstock excise taxes at present law rates will not have any overall impact on business costs or consumer prices. The committee amendment expands the present law exemptions from the tax on chemical feedstocks to include exports of taxable chemicals, substances to produce a animal feed, and certain recycled metals (nickel, chromium or cobalt which is diverted, recovered or produced from solid waste or recovered materials, but not to imported recycled metals).

The committee amendment extends the current petroleum and chemical feedstock taxes for 5 years (through September 30, 1990), and imposes the new Superfund Excise Tax for the 5-year period (January 1, 1986 through December 31, 1990). The proceeds (amounts equivalent to revenues from these taxes) are to be deposited in the Superfund, to provide financing for Federal cleanup efforts of hazardous waste sites. The committee amendment also repeals the waste disposal excise tax and the associated Post-closure Liability Trust Fund. Finally, the committee amendment expands the tax-exempt industrial development bond financing to include certain hazardous waste treatment facilities.

Impact on personal privacy

Title II of the bill generally does not relate to the personal privacy of individuals.

Determination of the amount of paperwork

The new Superfund Excise Tax imposed under the committee amendment (title II of the bill) will involve some increase in paperwork for those subject to the tax. However, since the new tax is to be reported annually in accordance with the taxpayer's accounting year and is to be calculated using the taxpayer's existing accounting records, the net impact on the taxpayers should be minimal. A new Federal excise tax form may need to be filed.

B. Other Matters

Consultation with Congressional Budget Office on budget estimates

In accordance with section 403 of the Budget Act, the Committee on Finance advises that the Director of the Congressional Budget Office has examined the committee's budget estimates of the tax

provisions of title II of the bill (as shown in Part III of this report) and agrees with the committee's budget estimates. The Director submitted the following statement:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 23, 1985.

Hon. ROBERT PACKWOOD,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed the Superfund Revenue Act of 1985, an amendment in the nature of a substitute to Title II of S. 51, the Superfund Improvement Act of 1985, as ordered reported by the Senate Committee on Finance on May 16, 1985.

S. 51 would authorize, amend and expand Public Law 96–510, the Comprehensive Environment Response, Compensation, and Liability Act of 1980 (CERCLA). The budget effects of S. 51 as amended are shown in Table 1.

Under current law, the taxes imposed under CERCLA to fund the Superfund will expire September 30, 1985. S. 51, as ordered reported by the Senate Committee on Finance, would extend these taxes and would impose a new one. The excise taxes on crude oil and petroleum products and on chemical feedstocks would be extended at current rates through September 30, 1990. The bill would impose a new tax, the Superfund Excise Tax, on the sale or lease of personal property, in connection with a trade or business, by the manufacturer. A tax rate of 0.08 percent would be applied to the gross sales price or lease payments. Manufacturers with $5 million or less in taxable sale amounts, items sold or leased by state and local governments or by tax-exempt institutions, and exported goods would be exempt from the tax.

The amended Title II would repeal the Post-Closure Liability Trust Fund, effective October 1, 1985. Amounts in the Trust fund at that time would be transferred to the Superfund.

The amendment directs the General Accounting Office to study alternative ways to fund the Superfund, and to report to the Committee on Finance and House Committee on Ways and Means by January 1, 1988.

The committee amendment would also allow state and local governments to issue tax-exempt industrial development bonds to finance facilities for the treatment of hazardous waste. This provision would be effective on the date of the bill's enactment.

Table 1.—Budget Effects of S. 51 as Amended by the Committee on Finance

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Estimated spending effect:					
Authorization level	602	1,228	1,318	1,415	1,520
Outlays	216	646	1,015	1,264	1,413

Table 1.—Budget Effects of S. 51 as Amended by the Committee on Finance—Continued

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Estimated revenue effects:					
Extend excise tax on crude oil and petroleum products	38	42	42	42	42
Extend excise tax on chemical feedstocks	219	240	251	261	270
Impose new Superfund excise tax	344	946	1,025	1,112	1,208
Total excise taxes, gross	602	1,228	1,318	1,415	1,520
Total excise taxes net of income tax offsets	452	921	988	1,061	1,140
Authorize industiral revenue bonds for hazardous waste facilities	−9	−18	−31	−43	−57
Total net revenues	443	903	957	1,018	1,083
Estimated total budget effects:					
Revenues	443	903	957	1,018	1,083
Outlays	216	646	1,015	1,264	1,413
Increase (+) or decrease (−) in deficit	−227	−257	58	246	330

NOTE. The above estimates are relative to current law.

When compared to the CBO scorekeeping baseline, the net revenue increase under S. 51 would range from $243 million in 1986 to $842 million in 1990. The increase relative to the baseline is smaller than that shown in the table above because the baseline assumes extension of Superfund taxes at current rates. For purposes of this estimate, authorizations are assumed to equal gross excise tax revenues each year. Revenues collected under the Post-closure Liability Trust Fund tax are assumed to be credited to the Superfund in 1986.

On March 1, 1985, CBO prepared a cost estimate for S. 51, the Superfund Improvement Act of 1985, as ordered reported by the Senate Committee on Environment and Public Works. Title I of that bill would have authorized appropriations from the general fund of $206 million each year through 1990. As reported by the Committee on Finance, S. 51 would not authorize the transfer of any general funds to the Superfund. Moreover, the committee's amendment would also have the effect of eliminating the victim assistance demonstration program in S. 51, because this program was to be financed only through general fund appropriations to the Superfund. Estimated outlays are different because of these changes. In addition, the transfer of amounts from the Post-closure Liability Trust Fund to the Superfund will result in slightly higher outlays from the fund.

The amendment in the nature of a substitute to Title II of S. 51 will not change any of the provisions in Title I that affect the budgets of state and local governments.

If you wish further details on this estimate, please feel free to contact me.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

New budget authority

In compliance with section 308(a)(1) of the Budget Act, and after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to existing law by title II of the bill involve no new budget authority.

Tax expenditures

In compliance with section 308(a)(2) of the Budget Act with respect to tax expenditures, and after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to existing law by title II of the bill will involve increased tax expenditures (relating to the provision expanding the industrial development bond definition to include hazardous waste treatement facilities) of $158 million over fiscal years 1986-90 (see Part III for year-by-year amounts). The excise tax provisions of the committee amendment do not involve expenditures as currently defined.

V. CHANGES IN EXISTING LAW MADE BY TITLE II OF THE BILL, AS REPORTED

In the opinion of the Committee on Finance, it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of Rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the provisions of title II of S. 51, as reported by the committee).

VI. ADDITIONAL VIEWS OF SENATOR BOB DOLE

I strongly support the reauthorization of Superfund, because I believe we have an obligation to make sure that hazardous wastes do not permanently damage the environment or the health or our citizens. In addition, I think a compelling case has been made that the hazardous waste problem is so widespread, and the potential cost of cleanup so uncertain, that a substantial increase in the size of the hazardous waste cleanup fund is warranted. For these reasons I voted to report this legislation out of the Finance Committee.

Nevertheless, I do have strong reservations about the approach we are taking in this bill. Both in terms of the amount of money we are spending and the way we are rising it, fiscal restraint has been given short shrift. I think we could do better.

Funding Level

In 1980 Superfund was authorized at a level of about $1.5 billion over five years. That initial authorization has enabled us to begin the cleanup process, to learn more about the process and technology of hazardous waste cleanup, and to get a better idea of the costs involved. Although there remains considerable disagreement on the amount of funding that is needed and the pace at which it can be spent effectively, there is no dispute that the problem requires a significantly larger commitment of resources than we made in 1980. Accordingly, I supported the Administration's recommendation for a $5.3 billion program over the next five years. That is about three-and-a-half times larger than the program commitment we made in 1980.

At the same time, I do not believe the case has been made for the $7.5 billion program recommended by the Environment Committee and funded by the Finance Committee. We need to know a lot more about the cost of effective cleanup, and about how far we have to go to ensure the public health and safety with regard to a particular hazardous waste site, before we can be sure that $7.5 billion can be spent intelligently on this problem in the next five years. I am willing to defer to the expertise of the Environmental Protection Agency on the funding question, since they are the ones in charge of the cleanup, and they have the most direct knowledge of the costs and problems involved.

Finally, at a time of severe fiscal stress, I think we have to be cautions in setting funding levels for any program: however worthy the goal. We cannot afford to get let enthusiasm for a very popular and important program cloud our judgment as to what we can and should spend on that program. We should have agreed to raise $5.3 billion, and subject requests for more funds to the appropriations process.

Tax Increase

I also am uncomfortable with establishing a wholly new, broad-based revenue source to finance this higher funding level for Superfund. As I said at the time the Committee made its decision to adopt a manufacturers' excise tax, the fact that a new tax starts out with a low rate and a limited purpose is no guarantee it will stay that way. The entire income tax system started out with similar limitations, and that did nothing to stop its expansion.

I understand the desire to spread the burden of financing Superfund a bit more broadly, while still maintaining a relationship between the harzardous waste problem and the payors of the tax. In this case, the theory is that manufacuring activity in general is the source of the hazardous waste problem. But if we take that argument to its extreme, we ought to say that hazardous waste is a by-product of an advanced industrial society—in which case the tax ought to be broadened even further.

But I am unwilling to go to that extreme at this time, because it seems to me that doing so opens the door to significant new taxes or increases in existing taxes. That is not what the economy needs right now. Further, I do not think it is a coincidence that the Committee found it easy to vote for a $7.5 billion program when that program is largely funded by a very small tax on a large number of manufacturers. I fear that coupling this broad new tax with a popular program both removes considerations of fiscal restraint from our deliberations and guarnatees that this tax bill expend by leaps and bounds in the not too distant future.

I cannot, then, endorse this new tax. Let me reiterate that I strongly support the Superfund, and I will do whatever I can to ensure that it is reauthorized with much greater resources than it has had in the past. But we could have done better in structuring a revenue package for this bill that would raise the necessary funds without opening the door to an endlessly expanding program.

VII. ADDITIONAL VIEWS OF SENATOR BOB DOLE AND SENATOR DAVID DURENBERGER

[At the markup of the Superfund legislation, the Finance Committee agreed to include in the record an exchange of comments between Senator Durenberger, Senator Dole, and a representative of the Treasury Department.]

Senator DURENBERGER. I would like to ask the representative from Treasury some questions on one particular chemical feedstock. The chemical is xylene and some people seem to be a bit confused over the exact definition of xylene for the purpose of taxation.

Xylene comes in different forms, called isomers. You start with a mixed stream of these isomers from the refinery, which, of course, is a taxable chemical. But then the refiner can separate out the individual isomers. The issue is whether or not the isomers are taxable when they are sold or used in the manufacture of more complex chemicals.

The Treasury's proposed regulations say that xylene isomers are taxable when they are sold or used. Isn't it true that regarding xylene in the proposed regulations that the xylene isomers are taxable at their use or sale, Mr. Rollyson?

Mr. ROLLYSON. That is correct, Senator.

Senator DURENBERGER. Have you been collecting taxes on the sale of isomers?

Mr. ROLLYSON. Yes, we have.

Senator DURENBERGER. Then any retroactive change to the definition of xylene which excluded isomers, but made the separation of isomers a taxable event, would require giving back the money to those who have already paid it and making someone else pay those taxes instead, is that correct?

Mr. ROLLYSON. Well, we would have to refund the previousl paid taxes. It would be more difficult to justify imposing the tax retroactively on other taxpayers.

Senator DURENBERGER. Mr. Chairman, last year the Ways and Means Superfund bill changed the definition of xylene to exclude taxing the use or sale of the isomers. If this were to happen this year, we would be changing an existing industry practice. Also, I would like to point out that Congress would be getting involved in existing industry contracts. I think that would be very bad tax policy and very unfair to retroactivity change the definition from that found in the proposed Treasury regulations.

The CHAIRMAN. Thank you.

Senator DOLE. Mr. Chairman, I was aware of this issue last year. In addition to those reasons mentioned by Senator Durenberger, I opposed the changes made to the Superfund chemical xylene in the House bill last year because it changed the definition of xylene.

That change of definition would have reversed the relative position of producers and purchasers in regard to the Superfund tax on xylene. In addition, Congress would have been intervening, or worse yet, overturning commercial contracts. For these reasons, I will continue to favor the Treasury Department's proposed definition of xylene and will oppose any legislative change of that definition.

The CHAIRMAN. Thank you.

VIII. ADDITIONAL VIEWS OF SENATOR WILLIAM ARMSTRONG

Look before you leap!

That's my advice to Senators before they rush to vote for S. 51.

This bill provides a needed increase in funding for cleanup of hazardous wastes. But the Finance Committee recommends paying the bill by establishing a Manufacturers Environmental Excise Tax [MEET] . . . in effect a Value Added Tax, albeit a bowdlerized version . . . a questionable idea for at least three reasons.

First, the VAT is a new kind of federal tax, a tax about which many thoughtful persons have serious doubts. Such a levy is desirable, some say, because it taxes consumption rather than productivity and thrift. But a Value Added Tax also is, by its very nature, an insidious, hidden tax . . . almost invisible to the ultimate consumers who pay the bill. So it is an easy and tempting source of revenue for the government. Small changes in the VAT raise large amounts of revenue while disturbing few taxpayers. So once established the VAT could easily be used and abused to finance large increases in federal spending. Income taxes are more visible to individual taxpayers; therefore increases are inherently more difficult to legislate because of the direct, personal effect on individual taxpayers and hence provides a valuable constraint on expansion of federal spending.

Second, this bill taxes a specific segment of the economy—manufacturing—in order to fill a trust fund dedicated to a public purpose of virtually universal benefit. In the past, Congress has usually, and in my opinion wisely, linked such trust fund revenues and benefits. Thus revenues generated by highway users are spent to build and maintain highways; taxes on airline tickets finance construction of airports; excise taxes on plywood pay for reforestation, etc.

Third, the VAT will probably be very inefficient. The cost of administration and supervision will be disproportionate to the revenue raised.

So before the Senate acts on this legislation, I intend to consider other possible options. I invite Senators to join me in thinking about the implications of this tax and trust fund concept.

Background

I support strengthening the Hazardous Substance Response Trust Fund (Superfund), and voted to report the bill from Finance Committee for that reason.

This country faces a very serious hazardous waste disposal problem. As mentioned in the report of the Environment and Public Works Committee, modern chemical technology has contributed greatly to this Nation's standard of living, but has left a legacy of

hazardous substances and wastes which pose a serious threat to human health and the environment.

One of the most pressing threats is groundwater contamination. The Environmental Protection Agency (EPA) reports that one in every three large groundwater systems and one in every six supplies serving less than 10,000 people is contaminated by volatile chemicals. Many large cities—Tucson, Memphis, and Miami among them—rely entirely on groundwater supplies, as do most rural areas. The impact is well framed by the problems with the groundwater supply for Long Island, New York, where contamination affects supplies drawn by three million people.

We must act quickly to remove or detoxify the numerous abandoned hazardous sites that imperil citizens and natural resources. While toxic waste clean-up should be a top national priority, there has not been adequate progress in cleaning up hazardous waste sites. Of the funds so far committed to Superfund, only a third have been used to actually remove or detoxify waste, not a satisfactory record. But I am encouraged by reports that EPA will now begin more actual clean-up activities in this second five year period of Superfund than in the first.

Significant increases for Superfund are therefore justified the additional dollars will be directed to actual clean-up. With more than 800 sites currently on the National Priorities List (NPL) there is substantial work remaining. The Office of Technology Assessment (OTA) estimates that as many as 10,000 sites require clean-up. It is imperative that a greater proportion of committed funds are provided for hazardous waste clean-up.

The reauthorization of Superfund in combination with the Resource Conservation and Recovery Act (RCRA) establishes a reasonably comprehensive federal response to the problem of hazardous waste control and elimination. The amendments to RCRA in 1984 strengthened regulation of hazardous waste disposal to the point where the Congressional Budget Office projects that industry will spend between $8 and $11 billion a year on improved waste technologies by 1990.

RCRA regulates the management and disposal of currently generated hazardous wastes, and Superfund is responsible for cleaning up abandoned hazardous waste sites where those responsible for the dumping can no longer be identified. Consequently, there is great controversy about how to best finance Superfund. Since no clear liability can be established, who should pay clean-up costs? Today 12 oil and chemical companies pay 70% of Superfund excise taxes. Such a narrow tax base cannot possibly justify a proposed four-fold increase in expenditures.

The Senate Finance Committee has approved an across the board manufacturer's excise tax (small manufacturers with sales of less than $5 million are exempted). The underlying premise of this new tax is that manufacturer's produce toxic pollution and should therefore pay clean-up costs.

While I agree that a broader tax source is needed, I am not sure the Committee's recommendation is entirely proper and may set a tax policy precedent the Committee will eventually regret; may fail to tax those who produce the greatest toxic waste; will be unecessarily difficult to administer, comply with and enforce; will lead to

regrettable price distortions; and over time, this new tax will be vastly expanded to rival the growth in Social Security and income taxes.

Specific Objections to the New Manufacturers Tax

The Tax is Unfair; Polluters May Escape Taxation

Proponents for this new tax say it is designed to spread the burden of collecting revenues for Superfund among a broader base, specifically, all manufacturers with sales in excess of $5 billion. They argue that virtually all manufacturers produce some form of hazardous waste. Yet this tax is not a tax on hazardous waste. This new tax is based upon sales minus cost of goods sold—a value added tax. It disregards volume or degree of toxicity, and whether or not the manufacturer, in fact, produces hazardous wastes or for that matter treats otherwise properly disposes of them under RCRA.

Moreover, corporations are not the sole producers of toxic waste. State and federal government produce toxic waste, and in fact have been among the greatest culprits in not properly managing toxic waste dumps. Also a great degree of responsibility falls to consumers whose demands for these products results in their use and disposal. Therefore, is it appropriate to place so much of the financial responsibility on only one segment of the economy? I am skeptical.

An Inappropriate Trust Fund Tax?

I also doubt the idea of a value added tax for a dedicated trust fund such as Superfund. This new tax is dedicated to financing the clean-up of hazardous waste sites. The association between an abandoned hazardous waste site and the manufacturer that must partially fund its clean-up is at best circumstantial. This lack of a direct link in this trust fund between who pays and who receives the benefits (the entire nation in this case) is a departure from the general practice in other federal trust funds. For Example:

Airport and Airway Trust Fund.—Seven types of taxes are collected from various aviation activities, such as an 8% air passenger ticket tax and a $3 international departure tax. Funds raised are used for airport planning, construction, land acquisition and operations.

Deep Seabed Revenue Sharing Trust Fund.—An excise tax is to be collected on the imputed value of hard mineral resources removed from the deep seabed. Expenditures are to be made in accordance with an international treaty, yet to be agreed to.

Highway Trust FundA.—An excise tax exists on motor fuels, tires, trucks, trailers and certain other items. The funds are used for a wide variety of highway activities as construction, repair, safety and traffic control grants.

Inland Waterways Trust Fund.—Amounts in this trust fund are available as provided in appropriations acts, for construction and rehabilitation expenditure for navigation on the specified inland and intercoastal waterways. As excise tax is imposed on fuels used by vessels in these waterways.

Land and Water Conservation Fund.—This fund derives its funds from another trust fund, the Highway Trust Fund. Up to $1 million per year is transferred to this fund, equivalent to motorboat fuel taxes collected. The fund assists in the preservation and development of outdoor recreation resources.

National Recreation Boating Safety and Facilities Improvement Fund.—Revenues from the excise tax on sport fishing equipment and the excise taxes collected on motorboat fuels (other than the $1 million to the Land and Water Trust Fund), and import duties on fishing equipment, yachts and pleasure crafts go into this fund. Expenditures, subject to appropriations, go for the purpose of restoring and managing all species of fish sport and recreation.

Reforestation Trust Fund.—Import duties on plywood and lumber are the source of financing for this fund. The fund is used to supplement appropriations for reforestation and timber stock improvement on publicly owned national forests.

Tax Court Judges Survivors' Annuity Fund.—Judges electing to participate have 3% of their salaries withheld for a fund to pay annuities to deceased judges' surviving spouse and children.

Black Lung Disability Trust Fund.—A manufacturers' excise tax is imposed on domestically mined coal (other than lignite) which is sold or used by the producer. The trust fund pays benefits if there is no responsible operator among the miner's employers or if the responsible operator is in default.

Railroad Retirement System.—Six sources of income produce this fund, including payroll taxes on earning of railroad employers and employees, general revenues, and a tax levied on carriers only. Retirement and survivors' benefits are available to those who qualify.

With these funds generally there is a direct connection between who pays and who receives the benefit of the fund. In contrast, the new corporate Superfund tax departs from this practice. This is a questionable precedent to establish in federal tax policy.

Costly and Complicated to Administer

I am also concerned that the new tax is likely to be costly to administer. These complications are not warranted by the level of tax revenue to be raised. The U.S. Treasury Department has extensively studied value added taxes and concluded that it would cost $700 million annually to administer a VAT and require the addition of 20,000 new employees. Of course, the cost of administering this new Superfund Tax will be less than a national VAT tax, but it will still be substantial, especially in light of the revenue to be raised.

Price Distortions

As just one example of the complexity and price distortions the new tax will create, the same product can get to market through several different production routes, which reflcts that certain companies are more integrated than others. To their credit, the Committee anticipated the problem and directed the Treasury to devise intercompany pricing rules. But the fact that such a significant issue will be left to subsequent Treasury regulation without clear and specific guidance from Congress raises doubt about the wisdom of this tax.

The exemptions provided to manufacturers under $5 million in sales, for agricultural products and wholesalers and retailers will prove problematical. First, companies producing the same product, but whose total sales figures fall on different sides of the $5 million exemption level, will encounter price distortions. The smaller company gets their product exempted from the tax, while the larger company pays the tax. Second, a distortion will occur because of the exemptions provided to farms, wholesalers and retailers. They will not be able to take credit for the MEET paid by the manufacturer on goods they purchase. This will result in a price increase for them that cannot be passed on to the ultimate consumer.

Finally, it is argued that the MEET approved by the Finance Committee will lessen distortions because of the low rate applied. Nonetheless, it is equally true that the low rate does not warrant the cost, complications and price distortions of a MEET when used to finance a dedicated trust fund.

International Trade

As the Committee reported the bill, there are two provisions relating to trade. First, the proposed Superfund tax will not be applied to manufactured items that are exported, and will be applied to manufactured items entering the country. Second, feedstocks are to be exempt from the current feedstock taxes if they are exported.

This may be the correct policy from a trade standpoint, but in effect, we would encourage the production of hazardous wastes in this country for products used in other countries.

May Lead to Two New Taxes

In addition, I have a concern about the number of new taxes that will ultimately be enacted to finance Superfund. The Senate Finance Committee's actions in eliminating the option of a waste-end tax and substituting the broad based tax contemplates the addition of only one new tax—the MEET. The House of Representatives may proceed with a waste-end only or a combination of waste-end, general revenues and a broad based tax. The MEET tax is said to impact 30,000 manufacturers, many of whom may also have to bear a waste-end tax as well if the conference committee so decides. Thus the arrival of the MEET may inflict two new taxes on the manufacturing segment of the economy even though it's intent was to limit it to one.

Likely Be Expanded In The Future

The history of federal taxes clearly shows that once a tax is enacted, it inevitably expands. The first federal income tax imposed in the United States taxed less than one percent of the population and hauled in less than one percent of personal income. Today some 90% of American households pay federal taxes, and taxes account for nearly 18% of the nation's gross national product.

The Social Security tax is another example. The first Social Security tax was two percent tax on the first $3,000 of wages. Today, the combined employer-employee Social Security tax rate is 14% on the first $39,600 of wages. Where in 1940, the maximum tax paid was $60, the maximum tax exceeds $5,400 annually today. For

many citizens and corporations, they pay more in Social Security taxes than they do in income taxes.

Now Congress is creating this new Superfund excise tax. Proponents argue that it is a low tax rate. That is true. The initial tax rate is only .08% of manufacturer's gross receipts minus cost of goods sold. If this tax is enacted, I predict that over time both the rate and the base will be substantially expanded.

Conclusion

For all these reasons, I oppose the enactment of a new Superfund Excise Tax. The question is, then, what is a better method of financing clean-up of toxic waste sites?

First, I support the current tax on petroleum and chemical feedstocks which are known to be toxic. Second, a waste-end tax—a tax charged on the disposal of toxic wastes—may also be reasonable. But clearly, these two new taxes will not generate the revenues necessary to pay for full and timely clean-up.

For this reason, I believe that using general revenues is appropriate in cleaning up abandoned hazardous waste sites. It should be among our highest national priorities to clean up these sites which threaten an estimated 10,000 communities and neighborhoods throughout the United States. With a federal budget which will spend nearly $5 trillion in the next five years, I believe our national priorities can and should be directed to accommodate the urgent need to clean up sites and accommodate the necessary spending within the federal budget without creating an entirely new tax.

W. L. Armstrong.

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